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March 1, 2017

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Christine Hoard
Environmental Protection Specialist
US EPA, Region VII
AWMD/CORP
11201 Renner Blvd.
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Dear Christine,

On behalf of Big Ox Energy, LLC ("Big Ox"), we hereby respond to your Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") Section 104 Information Request, and incorporate by reference the introduction of our prior letter addressing the Clean Water Act Information Request, which discusses the factual background at issue in this matter.

CERCLA Reportable Quantity Thresholds

CERCLA requires reporting and notification when a threshold amount (termed the "reportable quantity") of a listed substance is released. 40 C.F.R. § 302.6. The reportable quantity for hydrogen sulfide is 100 pounds. 40 C.F.R. § 302.4. Because the quantity of hydrogen sulfide that the Big Ox facility has present at any time is estimated not to exceed 47 pounds (as a generous estimate), Big Ox is highly unlikely to ever have a hydrogen sulfide release that reaches the reportable quantity threshold.

Christine Hoard
March 1, 2017
Page Two

Confidential Business Information Claim

CERCLA allows a regulated entity to request that the U.S. Environmental Protection Agency (“EPA”) protect as confidential business information (“CBI”) and not disclose to the public investigative information and data that would divulge methods or processes entitled to protection as “trade secrets.” 42 U.S.C. § 9604(e)(7). EPA must consider all information, including information obtained during inspections, as confidential. Big Ox’s facility uses proprietary technology that meets the definition of a “trade secret” in part because the process is unique in the United States, and public access to the information could dramatically impact Big Ox’s businesses, competitive position, and future prospects. Big Ox’s manner of treating the waste that it receives—including methods of receiving feedstocks, feedstock types, system capacities, intake volumes, heating methods, temperatures, PH, mixing and blending procedures, and additives—are part of its trade secrets that separate its options from the competition. Big Ox cannot disclose its customer base per agreements with these feedstock suppliers, and has also promised to protect the specifications of the material they supply to Big Ox. Big Ox has fewer than 20 customers and making any of their information publicly known may lead to interest from competitors and loss in market share for Big Ox.

EPA has recognized that “[d]isclosure to the public of allegedly confidential information is an irreversible act. When there is substantial doubt about the propriety of release, the Agency should act in a manner which would preserve the issues for possible judicial resolution, rather than in a manner which would not only moot the matter from a judicial standpoint but also expose agency officers and employees to possible criminal prosecution under 18 U.S.C. § 1905.” See 40 Fed. Reg. 21,987, 21,990 (May 20, 1985). Here, if EPA even has a question whether documents and information related to Big Ox’s novel technology constitute trade secrets, EPA must treat them as confidential.

KELLEY DRYE & WARREN LLP

Christine Hoard
March 1, 2017
Page Three

Big Ox claims all information submitted in response to this CERCLA Information Request and all information discovered or gathered by EPA during facility and other inspections as confidential trade secrets. Big Ox requests that the information be permanently maintained as confidential.

While anaerobic digestion may be a common process, Big Ox has specific methods that are absolutely proprietary and critical to our competitive advantage in the marketplace. Business information getting into the wrong hands could be damaging to our future business prospects not only in South Sioux City, but on a national level. Furthermore, the customers with whom we have developed business relationships are in many cases global leaders in their own field, and their doing business with us may be considered a competitive advantage for those customers. These customers have an expectation that we will keep even the mere fact of an existing business relationship strictly confidential. Additionally, for our own competitive purposes, customer lists and details about those relationships, material types, and so on must remain confidential.

* * *

If we find any additional documents or data relevant to this Information Request, we will provide them to EPA as they are identified. Please let us know if you have any questions. On behalf of Big Ox we look forward to working with you to address all EPA's issues and questions.

Best regards,



William M. Guerry
Jonathan K. Cooperman